



PAPER A

Purpose: For Decision

Committee report

Committee	LICENSING SUB COMMITTEE
Date	11 JULY 2013
Title	TO DETERMINE AN APPLICATION FOR A PREMISES LICENCE UNDER SECTION 17 OF THE LICENSING ACT 2003 FOR JACK UP THE 80's EVENT, BATHINGBOURNE LANE, NEWCHURCH, ISLE OF WIGHT, PO36 0LU.
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BACKGROUND

1. A premises licence issued under section 18 of the Licensing Act 2003 authorises the use of premises for the sale or supply of alcohol, the provision of regulated entertainment and the provision of late night refreshment.
2. An application for a premises licence was submitted to the licensing authority on 14 April 2013 for premises situated on Land at Bathingbourne Lane, Newchurch and titled Jack up the 80's (Appendix A).
3. The applicant is required to submit a copy of the application to Responsible Authorities as defined in the Licensing Act, and to place a notice of the application at the premises and in a local newspaper.
4. Any person may make representations in respect of the application and if these are not resolved the licensing authority must hold a hearing to determine the application.

CONSULTATION

5. The Licensing Act 2003 prescribes a twenty eight day consultation period, commencing the day after the application has been correctly served. Applicants are required to serve each of the Responsible Authorities with a copy of the application, advertise the application at or on the premises and also in the local newspaper.
6. The application for a premises licence was received on 15 April 2013. The application was advertised in the Isle of Wight County Press, at the premises and on the Council's website. Due to a delay in placing the advert in the County Press the consultation period was extended, ending on 13 June 2013

7. The outcome of the consultation in respect of this application is as follows:

<u>Responsible Authorities</u>	
Children's Services	No Representation made
Environmental Health	No Representation made but informative sent to applicant
Fire and Rescue Service	No Representation made
Trading Standards Service	No Representation made
Planning Services	No Representation made
Police	Conditions agreed with the applicant
NHS	No Representation made
Licensing Authority	No Representation made

8. Environmental Health

Although no formal representation was made by the Environmental Health department, guidance was sent to the applicant, informing them of their responsibilities in areas relating to Food Hygiene, Public Health and Health and Safety. A copy of this guidance can be found at Appendix B.

9. Police

The applicant has agreed a number of conditions recommended by the police. A copy of these conditions can be found at Appendix C.

Other Persons

10. Three valid representations have been received from other persons relating to the following licensing objectives:

- Prevention of public nuisance
- Prevention of crime and disorder

Some of the issues raised by other persons were not considered relevant to the application and have therefore not been included in this report. The relevant extracts from the representations can be found at Appendix D.

Objectors are concerned that there will be nuisance from noise, particularly from music during the event and the setting up and dismantling of equipment pre and post event. There is also a concern that traffic congestion and the potential disruption that this will bring to areas around the event site will cause noise nuisance and inconvenience to those accessing residential and businesses addresses within the vicinity of the proposed event site. Concerns have also been raised in relation to security, in particular the risk of damage and vandalism to local business buildings and the potential theft of stock associated with such. Objectors have stated that

incidences such as the above have occurred when other events have taken place within the vicinity.

11. Concerns raised via representations made by residents and businesses were forwarded to the applicant for consideration. In order to attempt to alleviate such concerns the applicant submitted a response in relation to these. Please see Appendix E for this response.

FINANCIAL/BUDGET IMPLICATIONS

12. Broadly, Council expenditure on licensing matters, and specifically those administered and enforced through Planning and Regulatory Services, balances income generated from fees.

LEGAL IMPLICATIONS

13. The consultation period ended on 13 June 2013. Schedule 1 of the Licensing Act (Hearings) Regulations 2005 states that the application must be determined within 20 working days of the end of the consultation period.

National Guidance

14. The following sections from the national guidance issued under section 182 of the Licensing Act 2003 are considered relevant to this application:
15. Each application on its own merits –
 - 1.17 Each application must be considered on its own merits and any conditions attached to licences and certificates must be tailored to the individual style and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed, may be unlawful where they cannot be shown to be appropriate for the promotion of the licensing objectives in any individual case.
16. Proportionality
 - 10.10 The 2003 Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. Conditions should be determined on a case by case basis and standardised conditions which ignore these individual aspects should be avoided. Licensing authorities and other responsible authorities should be alive to the indirect costs that can arise because of conditions. These could be a deterrent to holding events that are valuable to the community or of the funding of good and important causes. Licensing authorities should therefore ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objectives.

17. Hours of trading

- 10.11 The Government acknowledges that different licensing strategies may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions regarding licensed opening hours as part of the implementation of its licensing policy statement and licensing authorities are best placed to make decisions about appropriate opening hours in their areas based on their local knowledge and in consultation with responsible authorities. However, licensing authorities must always consider each application and must not impose predetermined licensed opening hours, without giving individual consideration to the merits of each application.

18. Public nuisance

- 2.18 The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.
- 2.19 Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It is important to remember that the prevention of public nuisance could therefore include low-level nuisance perhaps affecting a few people living locally as well as major disturbance affecting the whole community. It may also include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises.
- 2.20 Conditions relating to noise nuisance will normally concern steps appropriate to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or more sophisticated measures like the installation of acoustic curtains or rubber speaker mounts. Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises. Licensing authorities should be aware of the need to avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are very expensive to purchase and install and are likely to be a considerable burden for smaller venues.
- 2.21 As with all conditions, those relating to noise nuisance may not be appropriate in certain circumstances where the provisions of the Environmental Protection Act 1990, the Noise Act 1996, or the Clean

Neighbourhoods and Environment Act 2005 adequately protect those living in the area of the premises. But as stated earlier in this Guidance, the approach of licensing authorities and responsible authorities should be one of prevention and when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be appropriate.

- 2.22 Where applications have given rise to representations, any appropriate conditions should normally focus on the most sensitive periods. For example, music noise from premises usually occurs from mid-evening until either late-evening or early-morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. In certain circumstances, conditions relating to noise immediately surrounding the premises may also prove appropriate to address any disturbance anticipated as customers enter and leave.

Implications under the Crime and Disorder Act 1998

19. Members are advised that without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

Human Rights

20. Members are advised that this application must be considered against the background of the implications of the Human Rights Act 1998.
21. There are three convention rights, which need to be considered in this context:

Article 6 - Right to a Fair Trial

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

It has been held that the fact that there is a right of appeal to the Magistrates' Court from any decision of the Licensing Authority is sufficient to make the Council's licensing system compliant with the convention rights.

Article 8 - Right to Respect for Private and Family Life

Everyone has the right to respect for his private and family life, his home and his correspondence. In the case of article 8 there shall be no interference by a public authority with the exercise of this right except as such in accordance with the law and is necessary on a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder and crime, for the protection of health or morals or for the protection of the rights and freedoms of others.

Article 1 - First Protocol Protection of Property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. In the case of Article 1 of the first protocol it states that “no one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and the general principles of international law. The preceding provisions (of which articles 6 and 8 are but two) shall not however in any way impair the right of the state to enforce such laws as it deems necessary to control the use of the property in accordance with general interest or to secure the payment of taxes or other contributions or penalties”.

22. The Licensing Authority acknowledges the right of businesses in its area to operate, but equally acknowledges the fact that this must be balanced against the rights of residents not to be disturbed by unreasonable noise and nuisance caused by licensed premises. The Sub-Committee needs to be clear as to the rights granted and the need to ensure that the reasons given for any interference are proportionate and in accordance with the Council’s legitimate aim.
23. It is considered that the following paragraphs from the Licensing Authority’s Statement of Licensing Policy 2011 – 2014 have a bearing upon the application. Members’ attention in respect of this particular application is drawn to:

Paragraph 1	Introduction	All
Paragraph 2	Licensing Objectives	All
Paragraph 3	Licensable Activities	All
Paragraph 4	Integration of Strategies and Other Legislation	All
Paragraph 5	Approach to Licensing Applications	All
Paragraph 6	Cumulative Effect	N/A
Paragraph 7	Representation, Reviews, and Appeals	7.6 – 7.8
Paragraph 8	Enforcement	N/A
Paragraph 9	Operating Schedules	9.3, 9.5 – 9.7, 9.11 – 9.19.

EQUALITY AND DIVERSITY

24. The council as a public body is subject to general and specific duties under equality and diversity legislation and as such has a duty to go beyond prohibition and publish and promote service improvements by engaging with the local community to assess the impact of any decision on the local community. As a requirement under the Equality Act 2010 and further improvements to diversity legislation all local authorities are required to impact assess their services, policies/strategies and decisions with regard to diversity legislation – race, disability, gender, age, sexual orientation and religion/belief. (NB: this list is not exhaustive, it does cover current

legislation but future development could also include poverty and social inclusion as an example).

25. There is no requirement for an equality impact assessment to be carried out.

OPTIONS

Option 1: Grant the licence as per the application.

Option 2: Grant the licence as per the application with any additional conditions that the Sub-Committee deem reasonable and proportionate to promote the licensing objectives.

Option 3: Refuse the whole or part of the application.

RISK MANAGEMENT

26. With regard to Option 1: To grant the licence as per the application may not adequately mitigate the risk of a nuisance arising from regulated entertainment, and associated nuisance and disorder from the customers of the event; should the Sub-Committee deem this to be a likely outcome. The decision not to address the concerns raised may subsequently be appealed by those parties who have made representations.
27. With regard to Option 2: The risk of crime and disorder or nuisance being attributed to the premises could be reduced by attaching conditions to the licence to promote the licensing objectives. Conditions must be appropriate and proportionate. Any decision to attach additional conditions may be appealed by all parties if they believe the conditions do not adequately promote the licensing objectives.
28. With regard to Option 3: If the Sub-Committee decides to refuse all or part of the application, the decision may be appealed by all parties.

EVALUATION

29. Local Residents and Businesses are concerned that there will be nuisance from event noise and traffic. During the consultation process and following comments submitted by the Highways department, the applicant has been asked to submit a traffic plan which will be managed by Docklands Traffic Management (DTM), for the event in order to minimise traffic congestion and disruption that may potentially occur as part of the increased flow of traffic to the premises site. Despite attempts by the applicant to date, he has been unable to supply a copy of this plan. Members may wish to discuss details of the traffic plan during the meeting.
30. With regard to nuisance from noise, Environmental Health have made no representations in respect of this and have stated that when considering the frequency and duration of such noise that would occur from the site, it would be deemed insufficient to cause a nuisance to neighbouring properties.
31. The proposed event is a one off event with the licence only applying to the dates of 10 and 11 August 2013. It is not possible to evaluate whether any noise complaints have been received in the past due to factors mentioned above. Environmental

Health and Licensing service requests records show that no complaints relating to noise disturbance in the vicinity of the premises site have been received when other events (i.e. Garlic Festival) have taken place on the same site.

32. Concerns have been raised in respect of crime and disorder, however the Police have not raised any concerns in respect of this objective and conditions have been agreed with the applicant. These can be seen at Appendix C. Police have confirmed that over the past 3 years one reported incident of crime and disorder had taken place, this being in 2010, relating to an incident on site during the Garlic Festival.
33. The General Principles of Licence Conditions taken from National Guidance paragraph 1.16 states that “conditions cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave.”
34. The Committee should determine the application in accordance with section 18 of the Licensing Act 2003 and The Licensing Act (Hearings) Regulations 2005 and with a view to promoting the licensing objectives, which are:
 - a. The Prevention of Crime and Disorder
 - b. The Prevention of Public Nuisance
 - c. Public Safety
 - d. The Protection of Children from Harm
35. In making its decision, the Committee is also obliged to have regard to national guidance and the Council's own Statement of Licensing Policy.
36. The Committee must have regard to all of the representations made and the evidence it hears.

RECOMMENDATION

37. Members should determine the application in accordance with section 18 of the Licensing Act 2003 and The Licensing Act (Hearings) Regulations 2005.

APPENDICES ATTACHED

[Appendix A](#) - Application for premises licence under section 17 of the Licensing Act 2003

[Appendix B](#) - Representations received from Environmental Health

[Appendix C](#) - Representations received from Police (Agreed Conditions)

[Appendix D](#) - Representations received from other persons

[Appendix E](#) - Response to representations by Applicant

BACKGROUND PAPERS

- Isle of Wight Council Licensing Authority Statement of Licensing Policy 2011 – 2014.
<http://www.iwight.com/azservices/documents/1941-LICENSING-POLICY-2011-2014.pdf>

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